



IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

BENT OAK TOWNHOUSES, INC., §  
§  
Plaintiff, §  
§  
v. § CIVIL ACTION NO. 5:16-CV-1310  
§  
PELEUS INSURANCE COMPANY, §  
§  
Defendant. §  
§

**INDEX OF DOCUMENTS FILED IN STATE COURT ACTION**

1. State Court Docket Sheet/Case Detail Sheet
2. Plaintiff Bent Oak Townhouses, Inc.'s Original Petition  
Filed: December 19, 2016
3. Plaintiff Bent Oak Townhouses, Inc.'s First Amended Petition  
Filed: December 21, 2016
4. Civil Process Request  
Filed: December 21, 2016
5. Citation  
Issued: December 21, 2016  
Served: December 27, 2016
6. Defendant Peleus Insurance Company's Answer to Plaintiff's First Amended Petition  
Filed: December 28, 2016

# **EXHIBIT B-1**

**STATE COURT DOCKET SHEET/CASE DETAIL**

GERARD C. RICKHOFF



DONNA KAY MCKINNEY

COUNTY CLERK & DISTRICT CLERK  
COURT RECORDS SEARCH

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## Case #2016CI21574

Name:

Date Filed : 12/19/2016

Case Status : PENDING

Litigant Type : DEFENDANT

Court : 225

Docket Type : CONSUMER/DTPA

Business Name : PELEUS INSURANCE COMPANY

Style : BENT OAK TOWNHOUSES INC

Style (2) : vs PELEUS INSURANCE COMPANY

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# Case History

Currently viewing 1 through 11 of 11 records

Sequence	Date Filed	Description
P00010	12/28/2016	EMAILED COPY OF: ENTIRE FILE
P00009	12/28/2016	FAX TRANSMITTAL/RECORDING DEPT FROM ZELLE LLP
P00008	12/28/2016	AMENDED ANSWER OF PELEUS INSURANCE COMPANY TO PLAINTIFF'S FIRST AMENDED PETITION
S00001	12/21/2016	CITATION CERTIFIED MAIL PELEUS INSURANCE COMPANY ISSUED: 12/21/2016
P00007	12/21/2016	FAX TRANSMITTAL/RECORDING DEPT FROM ZELLE LLP
P00006	12/21/2016	FAX TRANSMITTAL/RECORDING DEPT FROM ZELLE LLP
P00005	12/21/2016	REQUEST FOR SERVICE AND PROCESS
P00004	12/21/2016	FIRST AMENDED PETITION
P00003	12/19/2016	SERVICE ASSIGNED TO CLERK 2
P00002	12/19/2016	JURY FEE PAID
P00001	12/19/2016	PET FOR HAIL DAMAGE COMMERCIAL WITH JURY DEMAND

# EXHIBIT B-2

PLAINTIFF BENT OAK TOWNHOUSES, INC.'S  
ORIGINAL PETITION

**2016CI21574**

CAUSE NO. \_\_\_\_\_

<b>BENT OAK TOWNHOUSES, INC.</b>	§	<b>IN THE DISTRICT COURT</b>
<i>Plaintiff</i>		§
v.		§
		§
<b>PELEUS INSURANCE COMPANY</b>	§	<b>BEXAR COUNTY, TEXAS</b>
<i>Defendant</i>		§
		§
		225TH
		_____ JUDICIAL DISTRICT

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**PLAINTIFF BENT OAK TOWNHOUSES, INC.'S ORIGINAL PETITION****TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW**, Bent Oak Townhouses, Inc., (hereinafter referred to as "Plaintiff"), complaining of Peleus Insurance Company, (hereinafter referred to as "Defendant") and for cause of action would respectfully show unto this Honorable Court and Jury as follows:

**DISCOVERY CONTROL PLAN**

1. Plaintiff intends for discovery to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process of Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief of over \$100,000.00.

**PARTIES**

2. Plaintiff is an individual residing in Bexar County, Texas.

3. Peleus Insurance Company is a foreign insurance company engaging in the business of insurance in the State of Texas. Defendant may be served with process by serving its registered agent of service, the

Commissioner of Insurance, located at the following address: Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701.

**JURISDICTION**

4. The Court has jurisdiction over this cause of action because the amount in controversy is within the jurisdictional limits of the Court.
5. The Court has jurisdiction over Defendant Peleus Insurance Company because Defendant is a foreign insurance company that engages in the business of insurance in the State of Texas and Plaintiff's causes of action arise out of Defendant's business activities in the State of Texas. Specifically, Peleus Insurance Company sought out and marketed for insurance in Texas and has "purposefully availed" itself of the privilege of conducting activities in Texas. *Kelly v. General Interior Constr., Inc.*, 301 S.W.3d 653, 660-61 (Tex. 2010).

**VENUE**

6. Venue is proper in Bexar County, Texas, because the Property is situated in Bexar County, Texas. TEX. CIV. PRAC. & REM. CODE §15.032.

**FACTS**

7. Plaintiff purchased a policy from Defendant, (hereinafter referred to as "the Policy"), which was in effect at the time of loss.
8. The Policy was purchased to insure Plaintiff's property, (hereinafter referred to as "the Property"), which is located at 11303 Vance Jackson Road, San Antonio, Texas 78230.
9. Defendant and/or its agent sold the Policy insuring the Property to Plaintiff.

10. Plaintiff is a “consumer” as defined under the Texas Deceptive Trade Practices Act (“DTPA”) because it is a business who sought or acquired by purchase or lease, goods or services, for commercial, personal or household use.
11. On or about April 12, 2016, Plaintiff experienced a severe weather related event which caused substantial damage to the Property and surrounding homes and businesses in the area. The Property’s damage constitutes a covered loss under the Policy issued by Defendant. On or around April 13, 2016, Plaintiff reported the claim to Defendant’s representatives. On April 15, 2016, via email, Strata Claims Management (“Strata”), a third-party administrator for Defendant, acknowledged the reported claim and explained that Engle Martin & Associates (“EMA”) will assist in the investigation and evaluation of the claim.
12. On May 17, 2016, via email, Strata informed Plaintiff that Defendant accepted coverage for the claim, pending a final agreement on the scope and pricing. Defendant intentionally and wrongfully delayed the acceptance and payment of this claim. On May 17, 2016, Defendant’s third-party administrator represented to Plaintiff that Defendant would cover the claim and wrongfully conditioned the acceptance of the covered loss on a final agreement of the pricing.
13. Additionally in the May 17, 2016 email, knowing Plaintiff was in desperate need of repairs, the third-party administrator, Strata, tried to unfairly and improperly settle the claim upon signing a release one month before producing the estimate. Strata’s bad faith conduct in attempting to settle a claim without producing an estimate and without Plaintiff having knowledge of Defendant’s estimate detailing the

repair costs is a wrongful and improper attempt to mislead Plaintiff and prevent Plaintiff from receiving Policy benefits that are rightfully owed.

14. Further, in the May 17, 2016 email, Defendant determined an advance payment in the amount of \$75,000.00 would be issued under a separate cover, pending a signed and notarized Proof of Loss. However, Defendant did not explain the “separate cover.” Such an attempt to mislead and confuse Plaintiff as to the nature of source of an advance payment is both improper and wrongful and constitutes violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act.
15. Plaintiff should have received Defendant’s estimate on or before May 21, 2016. However, it was not until June 23, 2016, via email, that EMA produced its estimate of repairs to Plaintiff because it was waiting on authorization from Defendant. Defendant’s improper delay of authorization and acceptance of coverage without producing the estimate constitutes bad faith misconduct. Peleus intentionally and wrongfully failed to promptly provide the estimate of \$224,203.88 to Plaintiff. Instead, Defendant created a further delay of this claim in order to prevent Plaintiff from receiving payments it is entitled to.
16. Defendant was informed on August 23, 2016 that Plaintiff had retained McClenney Moseley & Associates, PLLC. Plaintiff hired a professional estimate writer to do an inspection from September 19-22, 2016. The professional estimate writer requested documents from Defendant, including invoices for hail damage repairs that have been completed. To date, Defendant has intentionally failed to provide invoices of completed work, and therefore, the professional estimate writer’s estimate has not included allowances for such repairs. In the Narrative Report he states, “there is no ‘gray area’ in terms of

damages. Either it is damaged or not. If the life expectancy has been compromised, we allowed for replacement. If it was acceptably repairable, we allowed for a repair.”

17. The professional estimate writer observed all dwellings received functional hail damage to the roof tiles/shingles, soft and hard metals, flashings and gutters. All the roofs had 30-year laminate roofs that need to be replaced along with the step flashing, which will require detaching and resetting the siding. Resetting the siding will require scaffolding for worker safety as required by the Occupational Safety and Health Administration (“OSHA”). OSHA requires that when working on buildings with “unprotected sides and edges” that “each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.” Occupational Safety and Health Act of 1970 § 1926.501(b)(1). Peleus’ estimate did not allow for OSHA requirements.

18. The professional estimate writer also observed that the garages had a mixture of metal, tar and gravel, and TPO roofs. However, the garages that had metal roofs all exhibited functional hail damage due to hail hits of substantial size. The garages with TPO showed the ISO board was severely compromised due to decreases in areas of hail impact. Such severe damage to the ISO board warrants a roof replacement, which is a standard carrier practice. Additionally, the garages with tar and gravel roofs showed the tar was thinner due to hail impact. An insurance company must replace the roof because existing damage will allow for the tar’s expansion and compression, causing interior damage to the property.

19. The professional estimate writer also noted that the patio area experienced siding and trim damage to the exterior door, fences, and patio covers. The 3 mailbox structures exhibited functional damage to the 30-year laminate roofs. The trash dumpsters that were enclosed by 6 foot fences had hail hits. Additionally, the pool enclosure incurred the same damage as the dwelling roofs, namely an excess of 15 hail hits per test square.
20. In summation, Defendant and its representatives intentionally and wrongfully ignored objective evidence in order to prevent Plaintiff from receiving policy benefits for the covered loss.
21. Moreover, the estimate provided from Plaintiff's professional estimate writer was in the total amount of \$959,955.30, which includes \$945,288.39 for the dwelling and \$14,666.91 for other structures. The disparity between Peleus' estimate of \$224,203.88 and Bent Oak's professional estimate writer's estimate, which is \$734,751.42, is severe and alarming. Peleus' estimate was written so carelessly that the number of structures was not accurately accounted for. Peleus' estimate did not account for overhead and profit although it estimated for five different trades such as general demolition; heat, vent & air conditioning; painting; roofing; and window reglazing & repair. Peleus and its representatives conspired to knowingly, wrongfully, and incorrectly inspect and adjust the damages in order to underpay Plaintiff for a covered loss under the Policy.
22. Further, EMA hired Rimkus Consulting Group ("Rimkus"), a biased, bought and paid for engineer whose book of business is almost entirely, if not entirely from insurance carriers, to inspect only the garage roofs on June 15, 2016. EMA's direction intentionally and improperly narrowed the scope of Rimkus' investigation. Bent Oak has requested for the engineering report from both the engineer and

Peleus several times via phone and email to no avail. Plaintiff did not receive the engineering report until October 13, 2016, after Plaintiff had retained the services of an attorney. This improper and intentional delay in receiving the engineer's report constitutes bad faith.

23. Rimkus' engineering report wrongfully and incorrectly concludes that of all 57 garages, 44 garages had gravel roofs, 3 garages had metal roofs, and there was no damage to the 10 TPO single-ply membrane roof coverings. First, Rimkus' engineering report incorrectly states there are 3 garages with metal roofs. As evidenced by Plaintiff's professional estimate writer's estimate, there are 4 garages with metal roofs. Moreover, the professional estimate writer observed functional hail damage to all the metal garage roofs. Rimkus' engineering report does not include an inspection or discussion of any damage to the garages with metal roofs. Defendant improperly attempted to use Rimkus to generate a biased engineering report to prevent Plaintiff from receiving the policy benefits it is rightfully owed.
24. Second, as evidenced by Plaintiff's professional estimate writer's estimate, there are 8 single-ply membrane roof coverings. Rimkus' engineering report incorrectly states Garage B-4 and Garage M-1 have single-ply membrane roof coverings, when both Garage B-4 and Garage M-1 have gravel roofs. Every paragraph for the 10 garage roofs inspected states that spatter marks were observed, but failed to mention the severely compromised ISO board underlying the TPO roof membrane, which was noted in Bent Oak's professional estimate writer's estimate. Additionally, it is an industry standard to replace the roof to remediate the ISO board damage.
25. On October 17, 2016, Plaintiff submitted its sworn and notarized Proof of Loss form to Defendant, who did not issue payment until on or around November 9, 2016. Defendant should have issued payment on

or before November 8, 2016. Defendant's wrongful and improper delay of the payment regarding the undisputed actual cost value is an attempt to intentionally prevent Plaintiff from receiving Policy benefits it is owed.

26. Defendant's estimate did not allow for adequate funds to cover the cost of repairs and therefore grossly undervalued all of the damages sustained to the Property. As a result of Defendant's conduct, Plaintiff's claim was intentionally and knowingly underpaid.
27. Defendant's third-party claims administrator acted as an authorized agent of Defendant. Defendant's third-party claims administrator acted within the course and scope of their authority as authorized by Defendant. Plaintiff relied on Defendant and Defendant's third-party claims administrator to properly adjust the claim regarding the Property and to be issued payment to fix such damage, which did not happen and has not been rectified to date.
28. Defendant failed to perform its contractual duties to adequately compensate Plaintiff under the terms of the Policy. Specifically, Defendant refused to pay the full proceeds owed under the Policy. Due demand was made by Plaintiff for proceeds to be in an amount sufficient to cover the damaged Property.
29. Defendant and/or Defendant's assigned agent sold the Policy to Plaintiff, making various statements and representations to Plaintiff that the Property would be covered. Relying on the promises and representations made by Defendant and/or Defendant's assigned agent, Plaintiff filed a claim under the Policy with the belief that the Property would be covered after a severe weather event such as the one that damaged the Property.

30. All conditions precedent to recovery under the Policy had, and have, been carried out and accomplished by Plaintiff.

31. As a result of Defendant's wrongful acts and omissions, Plaintiff was forced to retain the professional services of McClenney Moseley & Associates, PLLC, who is representing Plaintiff with respect to these causes of action.

#### AGENCY

32. Plaintiff hereby incorporates by reference all facts and circumstances set forth under the foregoing paragraphs.

33. All acts by Defendant were undertaken and completed by its officers, agents, servants, employees, and/or representatives. All such acts were either done with the full authorization or ratification of Defendant and/or were completed in its normal and routine course and scope of employment.

34. Defendant and Defendant's third-party claims administrator's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a). All violations under this subsection are made actionable by TEX. INS. CODE § 541.151.

35. Defendant is liable for the unfair and deceptive acts of its third-party claims administrator because he/she meets the definition of a "person" as defined by the Texas Insurance Code. The term "person" is defined as "any individual, corporation, association, partnership, reciprocal or inter insurance exchange, Lloyds plan, fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, broker, *adjuster* or life and health insurance counselor." TEX. INS. CODE §541.002(2) (emphasis added); *see also Liberty Mutual Ins. Co. v. Garrison Contractors, Inc.* 966

S.W.2d 482, 484 (Tex. 1998) (holding an insurance company employee to be a person for the purpose of bringing a cause of action against them under the Texas Insurance Code and subjecting them to individual liability).

**NEGLIGENCE**

36. Plaintiff hereby incorporates by reference all facts and circumstances set forth under the foregoing paragraphs.

37. Plaintiff entrusted Defendant to properly adjust Plaintiff's insurance claim for the Property damage. Defendant did not properly adjust the claim and misinformed Plaintiff of the severity of the Property damage. Defendant had and owed a duty to ensure that the Property damage was properly adjusted. Nevertheless, Defendant failed to ensure that Plaintiff's damage was properly adjusted. This failure is a clear breach of Defendant's duty, and as a result, Plaintiff suffered significant injuries.

38. Defendant and its third-party claims administrator had and owed a legal duty to Plaintiff to properly adjust all losses associated with the Property. Defendant, individually and through its third-party claims administrator, breached this duty in a number of ways, including, but not limited to, the following:

- A. Defendant, individually and through its third-party claims administrator, was to exercise due care in adjusting and paying policy proceeds regarding the Property;
- B. Defendant, individually and through its third-party claims administrator, had a duty to competently and completely handle and pay all covered losses associated with the Property;

- C. Defendant, individually and through its third-party claims administrator, failed to properly complete all adjusting activities associated with Plaintiff's damages; and,
- D. Defendant's acts, omissions, and/or breaches, individually and through its third-party claims administrator, did great damage to Plaintiff, and were a proximate cause of Plaintiff's damages.

### **BREACH OF CONTRACT**

- 39. Plaintiff hereby incorporates by reference all facts and circumstances set forth under the foregoing paragraphs.
- 40. Defendant's conduct constitutes a breach of the insurance contract made between Defendant and Plaintiff. According to the Policy, which Plaintiff purchased, Defendant had the absolute duty to investigate Plaintiff's damages, and pay Plaintiff policy benefits for the claims made due to the extensive storm-related damages.
- 41. As a result of the storm-related event, Plaintiff suffered extreme weather related damages. Despite objective evidence of weather related damages provided by Plaintiff, Defendant Peleus Insurance Company breached its contractual obligations under the Policy by failing to pay Plaintiff cost related benefits to properly repair the Property, as well as for related losses associated with the subject loss event. As a result of this breach, Plaintiff has suffered additional actual and consequential damages.

### **VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

- 42. Plaintiff hereby incorporates by reference all facts and circumstances set forth under the foregoing paragraphs.

43. Defendant and/or its third-party claims administrator engaged in false, misleading, or deceptive acts or practices that constitute violations of the Texas Deceptive Trade Practices Act (“DTPA”), which is codified in the Texas Business and Commerce Code (“TEX. BUS. & COM. CODE”), including but not limited to:

- A. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law (TEX. BUS. & COM. CODE § 17.46(b)(12));
- B. Failing to disclose information concerning goods or services which were known at the time of the transaction, and the failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had such information been disclosed (§ 17.46(b)(24));
- C. Using or employing an act or practice in violation of the Texas Insurance Code (§ 17.50(a)(4));
- D. Unreasonably delaying the investigation, adjustment, settlement offer and prompt resolution of Plaintiff’s claim (TEX. INS. CODE § 541.060(a)(2)-(5));
- E. Failure to properly investigate Plaintiff’s claim (TEX. INS. CODE § 541.060(7)); and/or
- F. Hiring and relying upon a biased adjuster, in this case Defendant’s third-party claims administrator, to obtain a favorable, results-oriented report, and to assist Defendant in

severely underpaying and/or denying Plaintiff's damage claim (TEX. BUS. & COM. CODE § 17.46(31)).

44. As described in this Original Petition, Defendant represented to Plaintiff that its Policy and Peleus Insurance Company's adjusting and investigative services had characteristics or benefits that it actually did not have, which gives Plaintiff the right to recover proceeds. § 17.46(b)(5).
45. As described in this Original Petition, Defendant represented to Plaintiff that its Policy and Peleus Insurance Company's adjusting and investigative services were of a particular standard, quality, or grade when they were of another, which stands in violation of § 17.46 (b)(7).
46. By Defendant representing that it would pay the entire amount needed by Plaintiff to repair the damages caused by the weather related event and then not doing so, Defendant has violated §§ 17.46 (b)(5), (7), (12).
47. Defendant has breached an express warranty that the damage caused by the storm-related event would be covered under Policy. This breach entitles Plaintiff to recover under §§ 17.46 (b) (12), (20); 17.50 (a)(2).
48. Defendant's actions, as described herein, are unconscionable in that Defendant took advantage of Plaintiff's lack of knowledge, ability, and experience to a grossly unfair degree. Therefore, Defendant's unconscionable conduct gives Plaintiff the right to relief under § 17.50(a)(3).
49. Defendant's conduct, acts, omissions, and failures, as described in this Original Petition, are unfair practices in the business of insurance and are in violation of § 17.50 (a)(4).

50. Plaintiff is a consumer, as defined under the DTPA, and relied upon these false, misleading, and/or deceptive acts and/or practices, made by Defendant Peleus Insurance Company, to its detriment. As a direct and proximate result of Defendant's collective acts and conduct, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court, for which Plaintiff now sues. All of the aforementioned acts, omissions, and failures of Defendant are a producing cause of Plaintiff's damages which are described in this Original Petition.

51. Because Defendant's collective actions and conduct were committed knowingly and intentionally, in addition to all damages described herein, Plaintiff is entitled to recover mental anguish damages and additional penalty damages, in an amount not to exceed three times such actual damages. § 17.50(b)(1).

52. As a result of Defendant's unconscionable, misleading, and deceptive actions and conduct, Plaintiff has been forced to retain the legal services of the undersigned attorneys to protect and pursue these claims on its behalf. Accordingly, Plaintiff also seeks to recover its costs and reasonable and necessary attorneys' fees as permitted under § 17.50(d), as well as any other such damages to which Plaintiff may show itself to be justly entitled by law and in equity.

#### **VIOLATIONS OF THE TEXAS INSURANCE CODE**

53. Plaintiff hereby incorporates by reference all facts and circumstances set forth within the foregoing paragraphs.

54. Defendant and/or its third-party claims administrator's actions constitute violations of the Texas Insurance Code ("TEX. INS. CODE"), Chapters 541 and 542, including but not limited to:

- A. Misrepresenting to Plaintiff pertinent facts or policy provisions relating to the coverage at issue (TEX. INS. CODE § 541.060(a)(1));
- B. Failing to attempt, in good faith, to effectuate a prompt, fair and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear (§ 541.060(a)(2)(A));
- C. Failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or for the offer of a compromise settlement of a claim (§ 541.060(a)(3));
- D. Refusing, failing, or unreasonably delaying a settlement offer on the basis that other coverage is available (§ 541.060 (a)(5));
- E. Refusing, to pay a claim without conducting a reasonable investigation with respect to the claim (§ 541.060(a)(7));
- F. Forcing Plaintiffs to file suit to recover amounts due under the policy by refusing to pay all benefits due (§ 542.003(b)(5));
- G. Engaging in false, misleading, and deceptive acts or practices under the DTPA (§ 541.151(2));
- H. Failing to pay a valid claim after receiving all reasonably requested and required items from the insured (§ 542.058(a));
- I. Failing to pay a claim not later than the 5th business day after the date of notice of acceptance was made (§ 542.057); and/or

J. Failing to pay a valid claim after receiving all reasonably requested and required items from the insured (§ 542.058(a)).

55. By its acts, omissions, failures and conduct, Defendant has engaged in unfair and deceptive acts and practices in the business of insurance. Plaintiff, the insured and beneficiary, has a valid claim as a result of its detrimental reliance upon Defendant's unfair or deceptive acts or practices. § 541.151(2).

56. Defendant's aforementioned conduct compelled Plaintiff to initiate this lawsuit to recover amounts due under the Policy, by offering substantially less than the amount ultimately recovered. Defendant refused to offer more than the grossly undervalued estimates prepared by Defendant and/or Defendant's third-party claims administrator, despite knowing the actual damages were much greater than what was offered. Defendant's continued refusal to offer compelled Plaintiff to file suit. § 542.003(5).

57. Since a violation of the Texas Insurance Code is a direct violation of the DTPA, and because Defendant's actions and conduct were committed knowingly and intentionally, Plaintiff is entitled to recover, in addition to all damages described herein, mental anguish damages and additional penalty damages, in an amount not to exceed three times the amount of actual damages, for Defendant having knowingly, intentionally and/or negligently committed said actions and conduct. § 541.152.

58. As a result of Defendant's unfair and deceptive actions and conduct, Plaintiff has been forced to retain the legal services of the undersigned attorneys to protect and pursue these claims on their behalf. Accordingly, Plaintiff also seeks to recover their costs and reasonable and necessary attorneys' fees as permitted under TEX. BUS. & COM. CODE § 17.50(d) or TEX. INS. CODE § 541.152 and any other such damages to which Plaintiff may show itself justly entitled by law and in equity.

**BREACH OF THE COMMON LAW DUTY  
OF GOOD FAITH & FAIR DEALING**

59. Plaintiff hereby incorporates by reference all facts and circumstances in the foregoing paragraphs.

60. From and after the time Plaintiff's claim was presented to Defendant, the liability of Defendant to pay the full claim in accordance with the terms of the Policy was more than reasonably clear. However, Defendant has refused to pay Plaintiff in full, despite there being no basis whatsoever on which a reasonable insurance company would have relied on to deny full payment. Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing. *See Viles v. Security National Ins. Co.*, 788 S.W.2d 556, 567 (Tex. 1990) (holding that an insurer has a duty to its insureds to "investigate claims thoroughly and in good faith" and an insurer can only deny a claim after a thorough investigation shows that there is a reasonable basis to deny that claim).

61. For the breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from Defendant's breach of the duty, such additional costs, economic hardship, losses due to nonpayment of the amount owed to Plaintiff, and/or exemplary damages for emotional distress.

**KNOWLEDGE**

62. Each of the acts described above, together and singularly, were done "knowingly" and "intentionally," as the terms are used in the Texas Insurance Code, and were a producing cause of Plaintiff's damages described herein.

**DAMAGES**

63. Plaintiff will show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained by Plaintiff.
64. For breach of contract, Plaintiff is entitled to regain the benefit of Plaintiff's bargain, which is the amount of Plaintiff's claim, together with attorneys' fees.
65. For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiff is entitled to actual damages, which include the loss of the benefit that should have been paid pursuant to the Policy, court costs and attorneys' fees. For knowing conduct of the acts complained of, Plaintiff asks for three times Plaintiff's actual damages. TEX. INS. CODE § 541.152.
66. For noncompliance with Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of Plaintiff's claim, as well as eighteen (18) percent interest per annum of the amount of Plaintiff's claim as damages, together with attorneys' fees. § 542.060.
67. For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, and/or exemplary damages for emotional distress.
68. For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the law firm whose name is subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.

69. Defendant's acts have been the producing and/or proximate cause of damage to Plaintiff, and Plaintiff seeks an amount in excess of the minimum jurisdictional limits of this Court.

70. More specifically, Plaintiff seeks monetary relief, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees, in excess of \$1,000,000.00.

### **ADDITIONAL DAMAGES & PENALTIES**

71. Defendant's conduct was committed knowingly and intentionally. Accordingly, Defendant is liable for additional damages under the DTPA, TEX. BUS. & COM. CODE § 17.50(b)(1), as well as all operative provisions of the Texas Insurance Code. Plaintiff is clearly entitled to the 18% damages allowed under TEX. INS. CODE § 542.060.

### **ATTORNEY'S FEES**

72. In addition, Plaintiff is entitled to all reasonable and necessary attorneys' fees pursuant to the Texas Insurance Code, DTPA, and TEX. CIV. PRAC. & REM. CODE §§ 38.001-.005.

### **COMPEL MEDIATION**

73. Pursuant to TEX. INS. CODE § 541.161 and TEX. BUS. & COM. CODE § 17.5051, Plaintiff requests that Defendant be made to mediate no later than the 30th day of the signed order, following the 90th day after the date for which this pleading for relief is served upon Defendant.

### **JURY DEMAND**

74. Plaintiff demands a jury trial, consisting of citizens residing in Bexar County, Texas, and tenders the appropriate fee with this Original Petition.

## **DISCOVERY**

75. Texas Rule of Civil Procedure 47 has been met in this petition. As such, Plaintiff requests that Defendant respond to the Requests for Disclosure, Requests for Production and Interrogatories contained herein:

### **I. REQUESTS FOR DISCLOSURE**

1. Pursuant to the Texas Rules of Civil Procedure, Plaintiff request that Defendant Peleus Insurance Company, disclose all information and/or material as required by Rule 194.2, paragraphs (a) through (l), and to do so within 50 days of this request.

### **II. REQUESTS FOR PRODUCTION**

1. Please produce Peleus Insurance Company's complete claim files from the home, regional and local offices, as well as third party adjusters/adjusting firms regarding the subject claim, including copies of the file jackets, "field" files and notes, and drafts of documents contained in the file for the premises relating to or arising out of Plaintiff's underlying claim.
2. Please produce the underwriting files referring or relating in any way to the policy at issue in this action, including the file folders in which the underwriting documents are kept and drafts of all documents in the file.
3. Please produce a certified copy of the insurance policy pertaining to the claim made subject of this lawsuit, including all underwriting files and insurance applications sent on behalf of Plaintiff in its attempt to secure insurance on the Property, which is the subject of this suit.

4. Please produce the electronic diary, including the electronic and paper notes made by Peleus Insurance Company's claims personnel, contractors, and third party adjusters/adjusting firms relating to the Plaintiff's claim.
5. Please produce all emails and other forms of communication by and between all parties in this matter relating to the underlying event, claim or the Property, which is the subject of this suit.
6. Please produce the adjusting reports, estimates and appraisals prepared concerning Plaintiff's underlying claim.
7. Please produce the field notes, measurements and file maintained by the adjuster(s) and engineers who physically inspected the Property, which is the subject of this suit.
8. Please produce the emails, instant messages and internal correspondence pertaining to Plaintiff's underlying claim.
9. Please produce the videotapes, photographs and recordings of Plaintiff or Plaintiff's home, regardless of whether Peleus Insurance Company intends to offer these items into evidence at trial.
10. Please produce all communications, correspondence, documents and emails between any and all third-party claims administrators and/or agents and the Plaintiff, not limited to physical or audio recordings of all conversations between Plaintiff and any and all third-party claims administrators and/or agents.
11. Please produce all audio recordings or transcripts of conversations, calls, text, email or any other data sent to and from Plaintiff by any and all third-party claims administrators and/or agents after their letter of representation sent by counsel.

12. Please provide copies of all marketing material sent on behalf of Peleus Insurance Company and/or its agents after the date of loss of the Property, which is the subject of this suit.
13. Please provide all correspondence between Peleus Insurance Company and its third-party claims administrator, and all correspondence between Peleus Insurance Company and its assigned agents, after the date of loss of the Property, which is the subject of this suit.

### **III. INTERROGATORIES**

1. Please identify any person Peleus Insurance Company expects to call to testify at the time of trial.
2. Please identify the persons involved in the investigation and handling of Plaintiff's claim for insurance benefits arising from damage relating to the underlying event, claim or the Property, which is the subject of this suit, and include a brief description of the involvement of each person identified, their employer, and the date(s) of such involvement.
3. If Peleus Insurance Company or Peleus Insurance Company's representatives performed any investigative steps in addition to what is reflected in the claims file, please generally describe those investigative steps conducted by Peleus Insurance Company or any of Peleus Insurance Company's representatives with respect to the facts surrounding the circumstances of the subject loss. Identify the persons involved in each step.
4. Please identify by date, author, and result the estimates, appraisals, engineering, mold and other reports generated as a result of Peleus Insurance Company's investigation.
5. Please state the following concerning notice of claim and timing of payment:
  - a. The date and manner in which Peleus Insurance Company received notice of the claim;

- b. The date and manner in which Peleus Insurance Company acknowledged receipt of the claim;
  - c. The date and manner in which Peleus Insurance Company commenced investigation of the claim;
  - d. The date and manner in which Peleus Insurance Company requested from the claimant all items, statements, and forms that Peleus Insurance Company reasonably believed, at the time, would be required from the claimant pursuant to the investigation; and
  - e. The date and manner in which Peleus Insurance Company notified the claimant in writing of the acceptance or rejection of the claim.
6. Please identify by date, amount and reason, the insurance proceeds payments made by Defendant, or on Defendant's behalf, to the Plaintiff.
7. Has Plaintiff's claim for insurance benefits been rejected or denied? If so, state the reasons for rejecting/denying the claim.
8. When was the date Peleus Insurance Company anticipated litigation?
9. Have any documents (including those maintained electronically) relating to the investigation or handling of Plaintiff's claim for insurance benefits been destroyed or disposed of? If so, please identify what, when and why the document was destroyed, and describe Peleus Insurance Company's document retention policy.
10. Does Peleus Insurance Company contend that the insured's premises were damaged by storm-related events and/or any excluded peril? If so, state the general factual basis for this contention.

11. Does Peleus Insurance Company contend that any act or omission by the Plaintiff voided, nullified, waived or breached the insurance policy in any way? If so, state the general factual basis for this contention.
12. Does Peleus Insurance Company contend that the Plaintiff failed to satisfy any condition precedent or covenant of the Policy in any way? If so, state the general factual basis for this contention.
13. How is the performance of the adjuster(s) involved in handling Plaintiff's claim evaluated? State what performance measures are used and describe Peleus Insurance Company's bonus or incentive plan for adjusters.

### **CONCLUSION**

76. Plaintiff prays that judgment be entered against Defendant Peleus Insurance Company and that Plaintiff be awarded all of its actual damages, consequential damages, prejudgment interest, additional statutory damages, post judgment interest, reasonable and necessary attorneys' fees, court costs and for all such other relief, general or specific, in law or in equity, whether pled or un-pled within this Original Petition.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays it be awarded all such relief to which it is due as a result of the acts of Defendant Peleus Insurance Company, and for all such other relief to which Plaintiff may be justly and rightfully entitled. In addition, Plaintiff requests the award of treble damages under the Texas Deceptive Trade Practices Act and Texas Insurance Code, attorneys' fees for the trial and any appeal of this lawsuit, for all costs of Court on their behalf expended, for pre-judgment and post-

judgment interest as allowed by law, and for any other and further relief, either at law or in equity, to which Plaintiff may show the itself to be justly entitled.

RESPECTFULLY SUBMITTED,

*/s/ J. Zachary Moseley*

**McCLENNY MOSELEY & ASSOCIATES, PLLC**

James M. McClelly

State Bar No. 24091857

J. Zachary Moseley

State Bar No. 24092863

Kelley A. Seid

State Bar No. 24102480

411 N. Sam Houston Parkway E., Suite 200

Houston, Texas 77060

Principal Office No. 713-334-6121

Facsimile: 713-322-5953

[James@mma-pllc.com](mailto:James@mma-pllc.com)

[Zach@mma-pllc.com](mailto:Zach@mma-pllc.com)

[Kelley@mma-pllc.com](mailto:Kelley@mma-pllc.com)

**ATTORNEYS FOR PLAINTIFF**

## CIVIL PROCESS REQUEST

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING  
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: \_\_\_\_\_

CURRENT COURT: \_\_\_\_\_

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Plaintiff's Original Petition

FILE DATE OF MOTION: 12/19/2016  
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Peleus Insurance Company

ADDRESS: 333 Guadalupe, Austin, Texas 78701

AGENT, (if applicable): The Commissioner of Insurance

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

<input type="checkbox"/> ATTORNEY PICK-UP	<input type="checkbox"/> CONSTABLE
<input type="checkbox"/> CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____	Phone: _____
<input type="checkbox"/> MAIL	<input checked="" type="checkbox"/> CERTIFIED MAIL
<input type="checkbox"/> PUBLICATION:	
Type of Publication: <input type="checkbox"/> COURTHOUSE DOOR, or	
<input type="checkbox"/> NEWSPAPER OF YOUR CHOICE: _____	
<input type="checkbox"/> OTHER, explain _____	

\*\*\*\*\*

\*\*\*\*

2. NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGENT, (if applicable): \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

SERVICE BY (check one):

<input type="checkbox"/> ATTORNEY PICK-UP	<input type="checkbox"/> CONSTABLE
<input type="checkbox"/> CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____	Phone: _____
<input type="checkbox"/> MAIL	<input type="checkbox"/> CERTIFIED MAIL
<input type="checkbox"/> PUBLICATION:	
Type of Publication: <input type="checkbox"/> COURTHOUSE DOOR, or	
<input type="checkbox"/> NEWSPAPER OF YOUR CHOICE: _____	
<input type="checkbox"/> OTHER, explain _____	

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: J. Zachary Moseley TEXAS BAR NO./ID NO. 24092863

MAILING ADDRESS: 411 N. Sam Houston Parkway E, Suite 200, Houston, Texas 77060

PHONE NUMBER: 713 area code 334-6121 phone number FAX NUMBER: 713 area code 322-5986 fax number

EMAIL ADDRESS: Zach@mma-pllc.com

SERVICE REQUESTS WHICH CANNOT BE PROCESSED BY THIS OFFICE WILL BE HELD FOR 30 DAYS PRIOR TO CANCELLATION. FEES WILL BE REFUNDED ONLY UPON REQUEST, OR AT THE DISPOSITION OF THE CASE. SERVICE REQUESTS MAY BE REINSTATED UPON APPROPRIATE ACTION BY THE PARTIES.

INSTRUMENTS TO BE SERVED:

(Fill In Instrument Sequence Number, i.e. 1st, 2nd, etc.)

ORIGINAL PETITION

 AMENDED PETITION SUPPLEMENTAL PETITION

COUNTERCLAIM

 AMENDED COUNTERCLAIM SUPPLEMENTAL COUNTERCLAIM

CROSS-ACTION:

 AMENDED CROSS-ACTION SUPPLEMENTAL CROSS-ACTION

THIRD-PARTY PETITION:

 AMENDED THIRD-PARTY PETITION SUPPLEMENTAL THIRD-PARTY PETITION

INTERVENTION:

 AMENDED INTERVENTION SUPPLEMENTAL INTERVENTION

INTERPLEADER

 AMENDED INTERPLEADER SUPPLEMENTAL INTERPLEADER

INJUNCTION

MOTION TO MODIFY

SHOW CAUSE ORDER

TEMPORARY RESTRAINING ORDER

BILL OF DISCOVERY:

ORDER TO: \_\_\_\_\_  
(specify)MOTION TO: \_\_\_\_\_  
(specify)PROCESS TYPES:NON WRIT:

CITATION

ALIAS CITATION

PLURIES CITATION

SECRETARY OF STATE CITATION

COMMISSIONER OF INSURANCE

HIGHWAY COMMISSIONER

CITATION BY PUBLICATION

NOTICE

SHORT FORM NOTICE

PRECEPT (SHOW CAUSE)

RULE 106 SERVICE

SUBPOENA

WRITS:

ATTACHMENT (PROPERTY)

ATTACHMENT (WITNESS)

ATTACHMENT (PERSON)

CERTIORARI

EXECUTION

EXECUTION AND ORDER OF SALE

GARNISHMENT BEFORE JUDGMENT

GARNISHMENT AFTER JUDGMENT

HABEAS CORPUS

INJUNCTION

TEMPORARY RESTRAINING ORDER

PROTECTIVE ORDER (FAMILY CODE)

PROTECTIVE ORDER (CIVIL CODE)

POSSESSION (PERSON)

POSSESSION (PROPERTY)

SCIRE FACIAS

SEQUESTRATION

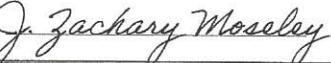
SUPERSEDEAS

CAUSE NUMBER (FOR CLERK USE ONLY): \_\_\_\_\_ COURT (FOR CLERK USE ONLY): \_\_\_\_\_

## STYLED Bent Oak Townhouses, Inc. v. Peleus Insurance Company

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name: J. Zachary Moseley	Email: Zach@mma-pllc.com	Plaintiff(s)/Petitioner(s): Bent Oak Townhouses, Inc.	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
Address: 411 N. Sam Houston Pkwy E.	Telephone: 713-344-6121	Additional Parties in Child Support Case:	
City/State/Zip: Suite 200, Houston, TX 77060	Fax: 713-322-5986	Custodial Parent: _____	
Signature: 	State Bar No: 24092863	Non-Custodial Parent: _____	
[Attach additional page as necessary to list all parties]			

## 2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil					Family Law
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)	
<b>Debt/Contract</b> <input checked="" type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability:  <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product:  <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order	
<b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure  <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____					
Employment	Other Civil				Parent-Child Relationship
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Tax	Probate & Mental Health				
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			

## 3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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## 4. Indicate damages sought (do not select if it is a family law case):

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees  
 Less than \$100,000 and non-monetary relief  
 Over \$100,000 but not more than \$200,000  
 Over \$200,000 but not more than \$1,000,000  
 Over \$1,000,000

# EXHIBIT B-3

PLAINTIFF BENT OAK TOWNHOUSES, INC.'S  
FIRST AMENDED PETITION

2016CI21574

CAUSE NO. \_\_\_\_\_

<b>BENT OAK TOWNHOUSES, INC.</b>	§	<b>IN THE DISTRICT COURT</b>
<i>Plaintiff</i>		§
v.		§
		§
		§
<b>PELEUS INSURANCE COMPANY</b>	§	<b>BEXAR COUNTY, TEXAS</b>
<i>Defendant</i>		§
		§
		§
		225
		<b>JUDICIAL DISTRICT</b>

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**PLAINTIFF BENT OAK TOWNHOUSES, INC.'S FIRST AMENDED PETITION**

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**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW**, Bent Oak Townhouses, Inc., (hereinafter referred to as "Plaintiff"), complaining of Peleus Insurance Company, (hereinafter referred to as "Defendant") and for cause of action would respectfully show unto this Honorable Court and Jury as follows:

**DISCOVERY CONTROL PLAN**

1. Plaintiff intends for discovery to be conducted under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads that this suit is not governed by the expedited-actions process of Texas Rule of Civil Procedure 169 because Plaintiff seeks monetary relief of over \$100,000.00.

**PARTIES**

2. Plaintiff is an individual residing in Bexar County, Texas.

3. Peleus Insurance Company is a foreign insurance company engaging in the business of insurance in the State of Texas. Defendant may be served with process by serving its attorney of record, Mr. James Holbrook with Zelle LLP at the following address: 901 Main Street, Suite 4000, Dallas, Texas 75202.

## **JURISDICTION**

4. The Court has jurisdiction over this cause of action because the amount in controversy is within the jurisdictional limits of the Court.
5. The Court has jurisdiction over Defendant Peleus Insurance Company because Defendant is a foreign insurance company that engages in the business of insurance in the State of Texas and Plaintiff's causes of action arise out of Defendant's business activities in the State of Texas. Specifically, Peleus Insurance Company sought out and marketed for insurance in Texas and has "purposefully availed" itself of the privilege of conducting activities in Texas. *Kelly v. General Interior Constr., Inc.*, 301 S.W.3d 653, 660-61 (Tex. 2010).

## **VENUE**

6. Venue is proper in Bexar County, Texas, because the Property is situated in Bexar County, Texas. TEX. CIV. PRAC. & REM. CODE §15.032.

## **FACTS**

7. Plaintiff purchased a policy from Defendant, (hereinafter referred to as "the Policy"), which was in effect at the time of loss.
8. The Policy was purchased to insure Plaintiff's property, (hereinafter referred to as "the Property"), which is located at 11303 Vance Jackson Road, San Antonio, Texas 78230.
9. Defendant and/or its agent sold the Policy insuring the Property to Plaintiff.
10. Plaintiff is a "consumer" as defined under the Texas Deceptive Trade Practices Act ("DTPA") because it is a business who sought or acquired by purchase or lease, goods or services, for commercial, personal or household use.

11. On or about April 12, 2016, Plaintiff experienced a severe weather related event which caused substantial damage to the Property and surrounding homes and businesses in the area. The Property's damage constitutes a covered loss under the Policy issued by Defendant. On or around April 13, 2016, Plaintiff reported the claim to Defendant's representatives. On April 15, 2016, via email, Strata Claims Management ("Strata"), a third-party administrator for Defendant, acknowledged the reported claim and explained that Engle Martin & Associates ("EMA") will assist in the investigation and evaluation of the claim.

12. On May 17, 2016, via email, Strata informed Plaintiff that Defendant accepted coverage for the claim, pending a final agreement on the scope and pricing. Defendant intentionally and wrongfully delayed the acceptance and payment of this claim. On May 17, 2016, Defendant's third-party administrator represented to Plaintiff that Defendant would cover the claim and wrongfully conditioned the acceptance of the covered loss on a final agreement of the pricing.

13. Additionally in the May 17, 2016 email, knowing Plaintiff was in desperate need of repairs, the third-party administrator, Strata, tried to unfairly and improperly settle the claim upon signing a release one month before producing the estimate. Strata's bad faith conduct in attempting to settle a claim without producing an estimate and without Plaintiff having knowledge of Defendant's estimate detailing the repair costs is a wrongful and improper attempt to mislead Plaintiff and prevent Plaintiff from receiving Policy benefits that are rightfully owed.

14. Further, in the May 17, 2016 email, Defendant determined an advance payment in the amount of \$75,000.00 would be issued under a separate cover, pending a signed and notarized Proof of Loss.

However, Defendant did not explain the “separate cover.” Such an attempt to mislead and confuse Plaintiff as to the nature of source of an advance payment is both improper and wrongful and constitutes violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act.

15. Plaintiff should have received Defendant’s estimate on or before May 21, 2016. However, it was not until June 23, 2016, via email, that EMA produced its estimate of repairs to Plaintiff because it was waiting on authorization from Defendant. Defendant’s improper delay of authorization and acceptance of coverage without producing the estimate constitutes bad faith misconduct. Peleus intentionally and wrongfully failed to promptly provide the estimate of \$224,203.88 to Plaintiff. Instead, Defendant created a further delay of this claim in order to prevent Plaintiff from receiving payments it is entitled to.
16. Defendant was informed on August 23, 2016 that Plaintiff had retained McClenney Moseley & Associates, PLLC. Plaintiff hired a professional estimate writer to do an inspection from September 19-22, 2016. The professional estimate writer requested documents from Defendant, including invoices for hail damage repairs that have been completed. To date, Defendant has intentionally failed to provide invoices of completed work, and therefore, the professional estimate writer’s estimate has not included allowances for such repairs. In the Narrative Report he states, “there is no ‘gray area’ in terms of damages. Either it is damaged or not. If the life expectancy has been compromised, we allowed for replacement. If it was acceptably repairable, we allowed for a repair.”
17. The professional estimate writer observed all dwellings received functional hail damage to the roof tiles/shingles, soft and hard metals, flashings and gutters. All the roofs had 30-year laminate roofs that need to be replaced along with the step flashing, which will require detaching and resetting the siding.

Resetting the siding will require scaffolding for worker safety as required by the Occupational Safety and Health Administration (“OSHA”). OSHA requires that when working on buildings with “unprotected sides and edges” that “each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.” Occupational Safety and Health Act of 1970 § 1926.501(b)(1). Peleus’ estimate did not allow for OSHA requirements.

18. The professional estimate writer also observed that the garages had a mixture of metal, tar and gravel, and TPO roofs. However, the garages that had metal roofs all exhibited functional hail damage due to hail hits of substantial size. The garages with TPO showed the ISO board was severely compromised due to decreases in areas of hail impact. Such severe damage to the ISO board warrants a roof replacement, which is a standard carrier practice. Additionally, the garages with tar and gravel roofs showed the tar was thinner due to hail impact. An insurance company must replace the roof because existing damage will allow for the tar’s expansion and compression, causing interior damage to the property.

19. The professional estimate writer also noted that the patio area experienced siding and trim damage to the exterior door, fences, and patio covers. The 3 mailbox structures exhibited functional damage to the 30-year laminate roofs. The trash dumpsters that were enclosed by 6 foot fences had hail hits. Additionally, the pool enclosure incurred the same damage as the dwelling roofs, namely an excess of 15 hail hits per test square.

20. In summation, Defendant and its representatives intentionally and wrongfully ignored objective evidence in order to prevent Plaintiff from receiving policy benefits for the covered loss.
21. Moreover, the estimate provided from Plaintiff's professional estimate writer was in the total amount of \$959,955.30, which includes \$945,288.39 for the dwelling and \$14,666.91 for other structures. The disparity between Peleus' estimate of \$224,203.88 and Bent Oak's professional estimate writer's estimate, which is \$734,751.42, is severe and alarming. Peleus' estimate was written so carelessly that the number of structures was not accurately accounted for. Peleus' estimate did not account for overhead and profit although it estimated for five different trades such as general demolition; heat, vent & air conditioning; painting; roofing; and window reglazing & repair. Peleus and its representatives conspired to knowingly, wrongfully, and incorrectly inspect and adjust the damages in order to underpay Plaintiff for a covered loss under the Policy.
22. Further, EMA hired Rimkus Consulting Group ("Rimkus"), a biased, bought and paid for engineer whose book of business is almost entirely, if not entirely from insurance carriers, to inspect only the garage roofs on June 15, 2016. EMA's direction intentionally and improperly narrowed the scope of Rimkus' investigation. Bent Oak has requested for the engineering report from both the engineer and Peleus several times via phone and email to no avail. Plaintiff did not receive the engineering report until October 13, 2016, after Plaintiff had retained the services of an attorney. This improper and intentional delay in receiving the engineer's report constitutes bad faith.
23. Rimkus' engineering report wrongfully and incorrectly concludes that of all 57 garages, 44 garages had gravel roofs, 3 garages had metal roofs, and there was no damage to the 10 TPO single-ply membrane

roof coverings. First, Rimkus' engineering report incorrectly states there are 3 garages with metal roofs.

As evidenced by Plaintiff's professional estimate writer's estimate, there are 4 garages with metal roofs.

Moreover, the professional estimate writer observed functional hail damage to all the metal garage roofs. Rimkus' engineering report does not include an inspection or discussion of any damage to the garages with metal roofs. Defendant improperly attempted to use Rimkus to generate a biased engineering report to prevent Plaintiff from receiving the policy benefits it is rightfully owed.

24. Second, as evidenced by Plaintiff's professional estimate writer's estimate, there are 8 single-ply membrane roof coverings. Rimkus' engineering report incorrectly states Garage B-4 and Garage M-1 have single-ply membrane roof coverings, when both Garage B-4 and Garage M-1 have gravel roofs. Every paragraph for the 10 garage roofs inspected states that spatter marks were observed, but failed to mention the severely compromised ISO board underlying the TPO roof membrane, which was noted in Bent Oak's professional estimate writer's estimate. Additionally, it is an industry standard to replace the roof to remediate the ISO board damage.

25. On October 17, 2016, Plaintiff submitted its sworn and notarized Proof of Loss form to Defendant, who did not issue payment until on or around November 9, 2016. Defendant should have issued payment on or before November 8, 2016. Defendant's wrongful and improper delay of the payment regarding the undisputed actual cost value is an attempt to intentionally prevent Plaintiff from receiving Policy benefits it is owed.

26. Defendant's estimate did not allow for adequate funds to cover the cost of repairs and therefore grossly undervalued all of the damages sustained to the Property. As a result of Defendant's conduct, Plaintiff's claim was intentionally and knowingly underpaid.
27. Defendant's third-party claims administrator acted as an authorized agent of Defendant. Defendant's third-party claims administrator acted within the course and scope of their authority as authorized by Defendant. Plaintiff relied on Defendant and Defendant's third-party claims administrator to properly adjust the claim regarding the Property and to be issued payment to fix such damage, which did not happen and has not been rectified to date.
28. Defendant failed to perform its contractual duties to adequately compensate Plaintiff under the terms of the Policy. Specifically, Defendant refused to pay the full proceeds owed under the Policy. Due demand was made by Plaintiff for proceeds to be in an amount sufficient to cover the damaged Property.
29. Defendant and/or Defendant's assigned agent sold the Policy to Plaintiff, making various statements and representations to Plaintiff that the Property would be covered. Relying on the promises and representations made by Defendant and/or Defendant's assigned agent, Plaintiff filed a claim under the Policy with the belief that the Property would be covered after a severe weather event such as the one that damaged the Property.
30. All conditions precedent to recovery under the Policy had, and have, been carried out and accomplished by Plaintiff.

31. As a result of Defendant's wrongful acts and omissions, Plaintiff was forced to retain the professional services of McClenney Moseley & Associates, PLLC, who is representing Plaintiff with respect to these causes of action.

**AGENCY**

32. Plaintiff hereby incorporates by reference all facts and circumstances set forth under the foregoing paragraphs.

33. All acts by Defendant were undertaken and completed by its officers, agents, servants, employees, and/or representatives. All such acts were either done with the full authorization or ratification of Defendant and/or were completed in its normal and routine course and scope of employment.

34. Defendant and Defendant's third-party claims administrator's conduct constitutes multiple violations of the Texas Insurance Code, Unfair Settlement Practices. TEX. INS. CODE § 541.060(a). All violations under this subsection are made actionable by TEX. INS. CODE § 541.151.

35. Defendant is liable for the unfair and deceptive acts of its third-party claims administrator because he/she meets the definition of a "person" as defined by the Texas Insurance Code. The term "person" is defined as "any individual, corporation, association, partnership, reciprocal or inter insurance exchange, Lloyds plan, fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, broker, *adjuster* or life and health insurance counselor." TEX. INS. CODE §541.002(2) (emphasis added); *see also Liberty Mutual Ins. Co. v. Garrison Contractors, Inc.* 966 S.W.2d 482, 484 (Tex. 1998) (holding an insurance company employee to be a person for the purpose of

bringing a cause of action against them under the Texas Insurance Code and subjecting them to individual liability).

**NEGLIGENCE**

36. Plaintiff hereby incorporates by reference all facts and circumstances set forth under the foregoing paragraphs.

37. Plaintiff entrusted Defendant to properly adjust Plaintiff's insurance claim for the Property damage. Defendant did not properly adjust the claim and misinformed Plaintiff of the severity of the Property damage. Defendant had and owed a duty to ensure that the Property damage was properly adjusted. Nevertheless, Defendant failed to ensure that Plaintiff's damage was properly adjusted. This failure is a clear breach of Defendant's duty, and as a result, Plaintiff suffered significant injuries.

38. Defendant and its third-party claims administrator had and owed a legal duty to Plaintiff to properly adjust all losses associated with the Property. Defendant, individually and through its third-party claims administrator, breached this duty in a number of ways, including, but not limited to, the following:

- A. Defendant, individually and through its third-party claims administrator, was to exercise due care in adjusting and paying policy proceeds regarding the Property;
- B. Defendant, individually and through its third-party claims administrator, had a duty to competently and completely handle and pay all covered losses associated with the Property;
- C. Defendant, individually and through its third-party claims administrator, failed to properly complete all adjusting activities associated with Plaintiff's damages; and,

D. Defendant's acts, omissions, and/or breaches, individually and through its third-party claims administrator, did great damage to Plaintiff, and were a proximate cause of Plaintiff's damages.

**BREACH OF CONTRACT**

39. Plaintiff hereby incorporates by reference all facts and circumstances set forth under the foregoing paragraphs.

40. Defendant's conduct constitutes a breach of the insurance contract made between Defendant and Plaintiff. According to the Policy, which Plaintiff purchased, Defendant had the absolute duty to investigate Plaintiff's damages, and pay Plaintiff policy benefits for the claims made due to the extensive storm-related damages.

41. As a result of the storm-related event, Plaintiff suffered extreme weather related damages. Despite objective evidence of weather related damages provided by Plaintiff, Defendant Peleus Insurance Company breached its contractual obligations under the Policy by failing to pay Plaintiff cost related benefits to properly repair the Property, as well as for related losses associated with the subject loss event. As a result of this breach, Plaintiff has suffered additional actual and consequential damages.

**VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

42. Plaintiff hereby incorporates by reference all facts and circumstances set forth under the foregoing paragraphs.

43. Defendant and/or its third-party claims administrator engaged in false, misleading, or deceptive acts or practices that constitute violations of the Texas Deceptive Trade Practices Act ("DTPA"), which is

codified in the Texas Business and Commerce Code (“TEX. BUS. & COM. CODE”), including but not limited to:

- A. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law (TEX. BUS. & COM. CODE § 17.46(b)(12));
- B. Failing to disclose information concerning goods or services which were known at the time of the transaction, and the failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had such information been disclosed (§ 17.46(b)(24));
- C. Using or employing an act or practice in violation of the Texas Insurance Code (§ 17.50(a)(4));
- D. Unreasonably delaying the investigation, adjustment, settlement offer and prompt resolution of Plaintiff’s claim (TEX. INS. CODE § 541.060(a)(2)-(5));
- E. Failure to properly investigate Plaintiff’s claim (TEX. INS. CODE § 541.060(7));  
and/or
- F. Hiring and relying upon a biased adjuster, in this case Defendant’s third-party claims administrator, to obtain a favorable, results-oriented report, and to assist Defendant in severely underpaying and/or denying Plaintiff’s damage claim (TEX. BUS. & COM. CODE § 17.46(31)).

44. As described in this First Amended, Defendant represented to Plaintiff that its Policy and Peleus Insurance Company's adjusting and investigative services had characteristics or benefits that it actually did not have, which gives Plaintiff the right to recover proceeds. § 17.46(b)(5).
45. As described in this First Amended, Defendant represented to Plaintiff that its Policy and Peleus Insurance Company's adjusting and investigative services were of a particular standard, quality, or grade when they were of another, which stands in violation of § 17.46 (b)(7).
46. By Defendant representing that it would pay the entire amount needed by Plaintiff to repair the damages caused by the weather related event and then not doing so, Defendant has violated §§ 17.46 (b)(5), (7), (12).
47. Defendant has breached an express warranty that the damage caused by the storm-related event would be covered under Policy. This breach entitles Plaintiff to recover under §§ 17.46 (b) (12), (20); 17.50 (a)(2).
48. Defendant's actions, as described herein, are unconscionable in that Defendant took advantage of Plaintiff's lack of knowledge, ability, and experience to a grossly unfair degree. Therefore, Defendant's unconscionable conduct gives Plaintiff the right to relief under § 17.50(a)(3).
49. Defendant's conduct, acts, omissions, and failures, as described in this First Amended, are unfair practices in the business of insurance and are in violation of § 17.50 (a)(4).
50. Plaintiff is a consumer, as defined under the DTPA, and relied upon these false, misleading, and/or deceptive acts and/or practices, made by Defendant Peleus Insurance Company, to its detriment. As a direct and proximate result of Defendant's collective acts and conduct, Plaintiff has been damaged in an

amount in excess of the minimum jurisdictional limits of this Court, for which Plaintiff now sues. All of the aforementioned acts, omissions, and failures of Defendant are a producing cause of Plaintiff's damages which are described in this First Amended.

51. Because Defendant's collective actions and conduct were committed knowingly and intentionally, in addition to all damages described herein, Plaintiff is entitled to recover mental anguish damages and additional penalty damages, in an amount not to exceed three times such actual damages. § 17.50(b)(1).
52. As a result of Defendant's unconscionable, misleading, and deceptive actions and conduct, Plaintiff has been forced to retain the legal services of the undersigned attorneys to protect and pursue these claims on its behalf. Accordingly, Plaintiff also seeks to recover its costs and reasonable and necessary attorneys' fees as permitted under § 17.50(d), as well as any other such damages to which Plaintiff may show itself to be justly entitled by law and in equity.

#### **VIOLATIONS OF THE TEXAS INSURANCE CODE**

53. Plaintiff hereby incorporates by reference all facts and circumstances set forth within the foregoing paragraphs.
54. Defendant and/or its third-party claims administrator's actions constitute violations of the Texas Insurance Code ("TEX. INS. CODE"), Chapters 541 and 542, including but not limited to:
  - A. Misrepresenting to Plaintiff pertinent facts or policy provisions relating to the coverage at issue (TEX. INS. CODE § 541.060(a)(1));

- B. Failing to attempt, in good faith, to effectuate a prompt, fair and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear (§ 541.060(a)(2)(A));
- C. Failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or for the offer of a compromise settlement of a claim (§ 541.060(a)(3));
- D. Refusing, failing, or unreasonably delaying a settlement offer on the basis that other coverage is available (§ 541.060 (a)(5));
- E. Refusing, to pay a claim without conducting a reasonable investigation with respect to the claim (§ 541.060(a)(7));
- F. Forcing Plaintiffs to file suit to recover amounts due under the policy by refusing to pay all benefits due (§ 542.003(b)(5));
- G. Engaging in false, misleading, and deceptive acts or practices under the DTPA (§ 541.151(2));
- H. Failing to pay a valid claim after receiving all reasonably requested and required items from the insured (§ 542.058(a));
- I. Failing to pay a claim not later than the 5th business day after the date of notice of acceptance was made (§ 542.057); and/or
- J. Failing to pay a valid claim after receiving all reasonably requested and required items from the insured (§ 542.058(a)).

55. By its acts, omissions, failures and conduct, Defendant has engaged in unfair and deceptive acts and practices in the business of insurance. Plaintiff, the insured and beneficiary, has a valid claim as a result of its detrimental reliance upon Defendant's unfair or deceptive acts or practices. § 541.151(2).

56. Defendant's aforementioned conduct compelled Plaintiff to initiate this lawsuit to recover amounts due under the Policy, by offering substantially less than the amount ultimately recovered. Defendant refused to offer more than the grossly undervalued estimates prepared by Defendant and/or Defendant's third-party claims administrator, despite knowing the actual damages were much greater than what was offered. Defendant's continued refusal to offer compelled Plaintiff to file suit. § 542.003(5).

57. Since a violation of the Texas Insurance Code is a direct violation of the DTPA, and because Defendant's actions and conduct were committed knowingly and intentionally, Plaintiff is entitled to recover, in addition to all damages described herein, mental anguish damages and additional penalty damages, in an amount not to exceed three times the amount of actual damages, for Defendant having knowingly, intentionally and/or negligently committed said actions and conduct. § 541.152.

58. As a result of Defendant's unfair and deceptive actions and conduct, Plaintiff has been forced to retain the legal services of the undersigned attorneys to protect and pursue these claims on their behalf. Accordingly, Plaintiff also seeks to recover their costs and reasonable and necessary attorneys' fees as permitted under TEX. BUS. & COM. CODE § 17.50(d) or TEX. INS. CODE § 541.152 and any other such damages to which Plaintiff may show itself justly entitled by law and in equity.

**BREACH OF THE COMMON LAW DUTY  
OF GOOD FAITH & FAIR DEALING**

59. Plaintiff hereby incorporates by reference all facts and circumstances in the foregoing paragraphs.

60. From and after the time Plaintiff's claim was presented to Defendant, the liability of Defendant to pay the full claim in accordance with the terms of the Policy was more than reasonably clear. However, Defendant has refused to pay Plaintiff in full, despite there being no basis whatsoever on which a reasonable insurance company would have relied on to deny full payment. Defendant's conduct constitutes a breach of the common law duty of good faith and fair dealing. *See Viles v. Security National Ins. Co.*, 788 S.W.2d 556, 567 (Tex. 1990) (holding that an insurer has a duty to its insureds to "investigate claims thoroughly and in good faith" and an insurer can only deny a claim after a thorough investigation shows that there is a reasonable basis to deny that claim).

61. For the breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from Defendant's breach of the duty, such additional costs, economic hardship, losses due to nonpayment of the amount owed to Plaintiff, and/or exemplary damages for emotional distress.

#### **KNOWLEDGE**

62. Each of the acts described above, together and singularly, were done "knowingly" and "intentionally," as the terms are used in the Texas Insurance Code, and were a producing cause of Plaintiff's damages described herein.

#### **DAMAGES**

63. Plaintiff will show that all of the aforementioned acts, taken together or singularly, constitute the producing causes of the damages sustained by Plaintiff.

64. For breach of contract, Plaintiff is entitled to regain the benefit of Plaintiff's bargain, which is the amount of Plaintiff's claim, together with attorneys' fees.
65. For noncompliance with the Texas Insurance Code, Unfair Settlement Practices, Plaintiff is entitled to actual damages, which include the loss of the benefit that should have been paid pursuant to the Policy, court costs and attorneys' fees. For knowing conduct of the acts complained of, Plaintiff asks for three times Plaintiff's actual damages. TEX. INS. CODE § 541.152.
66. For noncompliance with Texas Insurance Code, Prompt Payment of Claims, Plaintiff is entitled to the amount of Plaintiff's claim, as well as eighteen (18) percent interest per annum of the amount of Plaintiff's claim as damages, together with attorneys' fees. § 542.060.
67. For breach of the common law duty of good faith and fair dealing, Plaintiff is entitled to compensatory damages, including all forms of loss resulting from the insurer's breach of duty, such as additional costs, economic hardship, losses due to nonpayment of the amount the insurer owed, and/or exemplary damages for emotional distress.
68. For the prosecution and collection of this claim, Plaintiff has been compelled to engage the services of the law firm whose name is subscribed to this pleading. Therefore, Plaintiff is entitled to recover a sum for the reasonable and necessary services of Plaintiff's attorneys in the preparation and trial of this action, including any appeals to the Court of Appeals and/or the Supreme Court of Texas.
69. Defendant's acts have been the producing and/or proximate cause of damage to Plaintiff, and Plaintiff seeks an amount in excess of the minimum jurisdictional limits of this Court.

70. More specifically, Plaintiff seeks monetary relief, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees, in excess of \$1,000,000.00.

#### **ADDITIONAL DAMAGES & PENALTIES**

71. Defendant's conduct was committed knowingly and intentionally. Accordingly, Defendant is liable for additional damages under the DTPA, TEX. BUS. & COM. CODE § 17.50(b)(1), as well as all operative provisions of the Texas Insurance Code. Plaintiff is clearly entitled to the 18% damages allowed under TEX. INS. CODE § 542.060.

#### **ATTORNEY'S FEES**

72. In addition, Plaintiff is entitled to all reasonable and necessary attorneys' fees pursuant to the Texas Insurance Code, DTPA, and TEX. CIV. PRAC. & REM. CODE §§ 38.001-.005.

#### **COMPEL MEDIATION**

73. Pursuant to TEX. INS. CODE § 541.161 and TEX. BUS. & COM. CODE § 17.5051, Plaintiff requests that Defendant be made to mediate no later than the 30th day of the signed order, following the 90th day after the date for which this pleading for relief is served upon Defendant.

#### **JURY DEMAND**

74. Plaintiff demands a jury trial, consisting of citizens residing in Bexar County, Texas, and tenders the appropriate fee with this First Amended.

#### **DISCOVERY**

75. Texas Rule of Civil Procedure 47 has been met in this petition. As such, Plaintiff requests that Defendant respond to the Requests for Disclosure, Requests for Production and Interrogatories contained herein:

**I. REQUESTS FOR DISCLOSURE**

1. Pursuant to the Texas Rules of Civil Procedure, Plaintiff request that Defendant Peleus Insurance Company, disclose all information and/or material as required by Rule 194.2, paragraphs (a) through (l), and to do so within 50 days of this request.

**II. REQUESTS FOR PRODUCTION**

1. Please produce Peleus Insurance Company's complete claim files from the home, regional and local offices, as well as third party adjusters/adjusting firms regarding the subject claim, including copies of the file jackets, "field" files and notes, and drafts of documents contained in the file for the premises relating to or arising out of Plaintiff's underlying claim.
2. Please produce the underwriting files referring or relating in any way to the policy at issue in this action, including the file folders in which the underwriting documents are kept and drafts of all documents in the file.
3. Please produce a certified copy of the insurance policy pertaining to the claim made subject of this lawsuit, including all underwriting files and insurance applications sent on behalf of Plaintiff in its attempt to secure insurance on the Property, which is the subject of this suit.

4. Please produce the electronic diary, including the electronic and paper notes made by Peleus Insurance Company's claims personnel, contractors, and third party adjusters/adjusting firms relating to the Plaintiff's claim.
5. Please produce all emails and other forms of communication by and between all parties in this matter relating to the underlying event, claim or the Property, which is the subject of this suit.
6. Please produce the adjusting reports, estimates and appraisals prepared concerning Plaintiff's underlying claim.
7. Please produce the field notes, measurements and file maintained by the adjuster(s) and engineers who physically inspected the Property, which is the subject of this suit.
8. Please produce the emails, instant messages and internal correspondence pertaining to Plaintiff's underlying claim.
9. Please produce the videotapes, photographs and recordings of Plaintiff or Plaintiff's home, regardless of whether Peleus Insurance Company intends to offer these items into evidence at trial.
10. Please produce all communications, correspondence, documents and emails between any and all third-party claims administrators and/or agents and the Plaintiff, not limited to physical or audio recordings of all conversations between Plaintiff and any and all third-party claims administrators and/or agents.
11. Please produce all audio recordings or transcripts of conversations, calls, text, email or any other data sent to and from Plaintiff by any and all third-party claims administrators and/or agents after their letter of representation sent by counsel.

12. Please provide copies of all marketing material sent on behalf of Peleus Insurance Company and/or its agents after the date of loss of the Property, which is the subject of this suit.
13. Please provide all correspondence between Peleus Insurance Company and its third-party claims administrator, and all correspondence between Peleus Insurance Company and its assigned agents, after the date of loss of the Property, which is the subject of this suit.

### **III. INTERROGATORIES**

1. Please identify any person Peleus Insurance Company expects to call to testify at the time of trial.
2. Please identify the persons involved in the investigation and handling of Plaintiff's claim for insurance benefits arising from damage relating to the underlying event, claim or the Property, which is the subject of this suit, and include a brief description of the involvement of each person identified, their employer, and the date(s) of such involvement.
3. If Peleus Insurance Company or Peleus Insurance Company's representatives performed any investigative steps in addition to what is reflected in the claims file, please generally describe those investigative steps conducted by Peleus Insurance Company or any of Peleus Insurance Company's representatives with respect to the facts surrounding the circumstances of the subject loss. Identify the persons involved in each step.
4. Please identify by date, author, and result the estimates, appraisals, engineering, mold and other reports generated as a result of Peleus Insurance Company's investigation.
5. Please state the following concerning notice of claim and timing of payment:
  - a. The date and manner in which Peleus Insurance Company received notice of the claim;

- b. The date and manner in which Peleus Insurance Company acknowledged receipt of the claim;
  - c. The date and manner in which Peleus Insurance Company commenced investigation of the claim;
  - d. The date and manner in which Peleus Insurance Company requested from the claimant all items, statements, and forms that Peleus Insurance Company reasonably believed, at the time, would be required from the claimant pursuant to the investigation; and
  - e. The date and manner in which Peleus Insurance Company notified the claimant in writing of the acceptance or rejection of the claim.
6. Please identify by date, amount and reason, the insurance proceeds payments made by Defendant, or on Defendant's behalf, to the Plaintiff.
7. Has Plaintiff's claim for insurance benefits been rejected or denied? If so, state the reasons for rejecting/denying the claim.
8. When was the date Peleus Insurance Company anticipated litigation?
9. Have any documents (including those maintained electronically) relating to the investigation or handling of Plaintiff's claim for insurance benefits been destroyed or disposed of? If so, please identify what, when and why the document was destroyed, and describe Peleus Insurance Company's document retention policy.
10. Does Peleus Insurance Company contend that the insured's premises were damaged by storm-related events and/or any excluded peril? If so, state the general factual basis for this contention.

11. Does Peleus Insurance Company contend that any act or omission by the Plaintiff voided, nullified, waived or breached the insurance policy in any way? If so, state the general factual basis for this contention.
12. Does Peleus Insurance Company contend that the Plaintiff failed to satisfy any condition precedent or covenant of the Policy in any way? If so, state the general factual basis for this contention.
13. How is the performance of the adjuster(s) involved in handling Plaintiff's claim evaluated? State what performance measures are used and describe Peleus Insurance Company's bonus or incentive plan for adjusters.

### **CONCLUSION**

76. Plaintiff prays that judgment be entered against Defendant Peleus Insurance Company and that Plaintiff be awarded all of its actual damages, consequential damages, prejudgment interest, additional statutory damages, post judgment interest, reasonable and necessary attorneys' fees, court costs and for all such other relief, general or specific, in law or in equity, whether pled or un-pled within this First Amended.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays it be awarded all such relief to which it is due as a result of the acts of Defendant Peleus Insurance Company, and for all such other relief to which Plaintiff may be justly and rightfully entitled. In addition, Plaintiff requests the award of treble damages under the Texas Deceptive Trade Practices Act and Texas Insurance Code, attorneys' fees for the trial and any appeal of this lawsuit, for all costs of Court on their behalf expended, for pre-judgment and post-

judgment interest as allowed by law, and for any other and further relief, either at law or in equity, to which Plaintiff may show the itself to be justly entitled.

RESPECTFULLY SUBMITTED,

*/s/ J. Zachary Moseley*

**McCLENNY MOSELEY & ASSOCIATES, PLLC**

James M. McClelly

State Bar No. 24091857

J. Zachary Moseley

State Bar No. 24092863

Kelley A. Seid

State Bar No. 24102480

411 N. Sam Houston Parkway E., Suite 200

Houston, Texas 77060

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Facsimile: 713-322-5953

[James@mma-pllc.com](mailto:James@mma-pllc.com)

[Zach@mma-pllc.com](mailto:Zach@mma-pllc.com)

[Kelley@mma-pllc.com](mailto:Kelley@mma-pllc.com)

**ATTORNEYS FOR PLAINTIFF**

# EXHIBIT B-4

## CIVIL PROCESS REQUEST

## CIVIL PROCESS REQUEST

FOR EACH PARTY SERVED YOU MUST FURNISH ONE (1) COPY OF THE PLEADING  
FOR WRITS FURNISH TWO (2) COPIES OF THE PLEADING PER PARTY TO BE SERVED

CASE NUMBER: \_\_\_\_\_

CURRENT COURT: \_\_\_\_\_

TYPE OF INSTRUMENT TO BE SERVED (See Reverse For Types): Plaintiff's Original Petition

FILE DATE OF MOTION: 12/21/2016  
Month/ Day/ Year

SERVICE TO BE ISSUED ON (Please List Exactly As The Name Appears In The Pleading To Be Served):

1. NAME: Peleus Insurance Company

ADDRESS: 901 Main Street, Suite 4000, Dallas, Texas 75202

AGENT, (if applicable): Mr. James Holbrook with Zelle LLP

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): Citation

SERVICE BY (check one):

<input type="checkbox"/> ATTORNEY PICK-UP	<input type="checkbox"/> CONSTABLE
<input type="checkbox"/> CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____	Phone: _____
<input type="checkbox"/> MAIL	<input checked="" type="checkbox"/> CERTIFIED MAIL
<input type="checkbox"/> PUBLICATION:	
Type of Publication: <input type="checkbox"/> COURTHOUSE DOOR, or	
<input type="checkbox"/> NEWSPAPER OF YOUR CHOICE: _____	
<input type="checkbox"/> OTHER, explain _____	

\*\*\*\*\*

\*\*\*\*

2. NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

AGENT, (if applicable): \_\_\_\_\_

TYPE OF SERVICE/PROCESS TO BE ISSUED (see reverse for specific type): \_\_\_\_\_

SERVICE BY (check one):

<input type="checkbox"/> ATTORNEY PICK-UP	<input type="checkbox"/> CONSTABLE
<input type="checkbox"/> CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____	Phone: _____
<input type="checkbox"/> MAIL	<input type="checkbox"/> CERTIFIED MAIL
<input type="checkbox"/> PUBLICATION:	
Type of Publication: <input type="checkbox"/> COURTHOUSE DOOR, or	
<input type="checkbox"/> NEWSPAPER OF YOUR CHOICE: _____	
<input type="checkbox"/> OTHER, explain _____	

ATTORNEY (OR ATTORNEY'S AGENT) REQUESTING SERVICE:

NAME: J. Zachary Moseley TEXAS BAR NO./ID NO. 24092863

MAILING ADDRESS: 411 N. Sam Houston Parkway E, Suite 200, Houston, Texas 77060

PHONE NUMBER: 713 area code 334-6121 phone number FAX NUMBER: 713 area code 322-5986 fax number

EMAIL ADDRESS: Zach@mma-pllc.com

SERVICE REQUESTS WHICH CANNOT BE PROCESSED BY THIS OFFICE WILL BE HELD FOR 30 DAYS PRIOR TO CANCELLATION. FEES WILL BE REFUNDED ONLY UPON REQUEST, OR AT THE DISPOSITION OF THE CASE. SERVICE REQUESTS MAY BE REINSTATED UPON APPROPRIATE ACTION BY THE PARTIES.

INSTRUMENTS TO BE SERVED:

(Fill In Instrument Sequence Number, i.e. 1st, 2nd, etc.)

ORIGINAL PETITION

 AMENDED PETITION SUPPLEMENTAL PETITION

COUNTERCLAIM

 AMENDED COUNTERCLAIM SUPPLEMENTAL COUNTERCLAIM

CROSS-ACTION:

 AMENDED CROSS-ACTION SUPPLEMENTAL CROSS-ACTION

THIRD-PARTY PETITION:

 AMENDED THIRD-PARTY PETITION SUPPLEMENTAL THIRD-PARTY PETITION

INTERVENTION:

 AMENDED INTERVENTION SUPPLEMENTAL INTERVENTION

INTERPLEADER

 AMENDED INTERPLEADER SUPPLEMENTAL INTERPLEADER

INJUNCTION

MOTION TO MODIFY

SHOW CAUSE ORDER

TEMPORARY RESTRAINING ORDER

BILL OF DISCOVERY:

ORDER TO: \_\_\_\_\_  
(specify)MOTION TO: \_\_\_\_\_  
(specify)PROCESS TYPES:NON WRIT:

CITATION

ALIAS CITATION

PLURIES CITATION

SECRETARY OF STATE CITATION

COMMISSIONER OF INSURANCE

HIGHWAY COMMISSIONER

CITATION BY PUBLICATION

NOTICE

SHORT FORM NOTICE

PRECEPT (SHOW CAUSE)

RULE 106 SERVICE

SUBPOENA

WRITS:

ATTACHMENT (PROPERTY)

ATTACHMENT (WITNESS)

ATTACHMENT (PERSON)

CERTIORARI

EXECUTION

EXECUTION AND ORDER OF SALE

GARNISHMENT BEFORE JUDGMENT

GARNISHMENT AFTER JUDGMENT

HABEAS CORPUS

INJUNCTION

TEMPORARY RESTRAINING ORDER

PROTECTIVE ORDER (FAMILY CODE)

PROTECTIVE ORDER (CIVIL CODE)

POSSESSION (PERSON)

POSSESSION (PROPERTY)

SCIRE FACIAS

SEQUESTRATION

SUPERSEDEAS

# EXHIBIT B-5

## CITATION

CERTIFIED MAIL #7015166000043922974 Case Number: 2016-CI-21574



2016CI21574 S00001

**BENT OAK TOWNHOUSES INC**

*Plaintiff*

vs.

**PELEUS INSURANCE COMPANY**

*Defendant*

**CITATION**

(Note: Attached document may contain additional litigants).

**"THE STATE OF TEXAS"**

**DIRECTED TO: PELEUS INSURANCE COMPANY**  
BY SERVING MR. JAMES HOLBROOK WITH ZELLE LLP

901 MAIN ST 4000  
DALLAS TX 75202

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 21st day of December, 2016.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 21ST DAY OF DECEMBER A.D., 2016.

FIRST AMENDED PETITION

J ZACHARY MOSELEY  
ATTORNEY FOR PLAINTIFF  
411 N SAM HOUSTON PARKWAY E 200  
HOUSTON, TX 77060



**Donna Kay M<sup>c</sup>Kinney**  
**Bexar County District Clerk**

101 W. Nueva, Suite 217  
San Antonio, Texas 78205

By: *Maria J Abilez*, Deputy

*MIO on 12/21/16*

Officer's Return

Came to hand on the 21st day of December 2016, A.D., at 2:38 o'clock P.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_, by delivering to \_\_\_\_\_ a true copy of this Citation, upon which I endorse the date of delivery, together with the accompanying copy of the FIRST AMENDED PETITION

Cause of failure to execute this Citation is \_\_\_\_\_.

**Donna Kay M<sup>c</sup>Kinney**  
Clerk of the District Courts of  
Bexar County, Texas

By: *Maria J Abilez*, Deputy

FILE COPY (DK003)

# EXHIBIT B-6

DEFENDANT PELEUS INSURANCE COMPANY'S  
ANSWER TO PLAINTIFF'S FIRST AMENDED  
PETITION

CAUSE NO. 2016-CI-21574

BENT OAK TOWNHOUSES, INC., § IN THE DISTRICT COURT OF  
§  
Plaintiff, §  
§  
v. § BEXAR COUNTY, TEXAS  
§  
PELEUS INSURANCE COMPANY, §  
§  
Defendant. § 225<sup>th</sup> JUDICIAL DISTRICT

**DEFENDANT PELEUS INSURANCE COMPANY'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED PETITION**

Defendant Peleus Insurance Company files its Answer to Plaintiff Bent Oak Townhouses, Inc.'s First Amended Petition and states:

**GENERAL DENIAL**

1. Pursuant to Texas Rule of Civil Procedure 92, Peleus generally denies each and every allegation contained in Plaintiff Bent Oak Townhouses, Inc.'s First Amended Petition and demands strict proof thereof by a preponderance of the evidence. By this general denial, Peleus further demands that Plaintiff prove every fact in support of its claim(s) for exemplary damages by clear and convincing evidence.

**SPECIAL DENIAL**

2. Peleus specifically denies that Plaintiff has satisfied all conditions precedent to the recovery it seeks in this lawsuit.

3. For example, among other conditions precedent, Plaintiff failed to provide Peleus timely written notice of Plaintiff's statutory claims in this matter as expressly required by Texas Insurance Code Section 541.154, thereby precluding Plaintiff from prevailing on such claims. Plaintiff also failed to properly present its claim for attorneys' fees under Texas Civil Practice

and Remedies Code Section 38.001, thereby precluding Plaintiff's recovery of any such fees in this action.

4. Further, to recover under the Policy of insurance under which Plaintiff seeks coverage, Texas statute, and/or Texas law, Plaintiff must promptly provide Peleus all reasonably requested documentation and/or information necessary for Peleus to investigate, evaluate, adjust, and pay such alleged losses and/or damages. Plaintiff failed to satisfy this condition.

5. Discovery in this matter is ongoing and Peleus reserves the right to assert that Plaintiff has failed to meet other conditions precedent set forth under the Policy, Texas statute, and/or Texas law as this litigation proceeds.

#### **AFFIRMATIVE DEFENSES**

6. Pursuant to Texas Rule of Civil Procedure 94, Peleus sets forth the following affirmative defenses to the allegations set forth in Plaintiff's First Amended Petition:

a. Plaintiff's claims are barred, in whole or in part, on the basis that Plaintiff's First Amended Petition fails to state a claim against Peleus upon which relief can be granted.

b. Plaintiff's claims are barred, in whole or in part, by the Policy's provision prohibiting legal action against Peleus under the Policy unless Plaintiff has fully complied with all of the terms of the Policy.

c. Plaintiff's claims are barred, in whole or in part, to the extent the physical loss or damage claimed by Plaintiff did not occur during the applicable policy period (as required by the Policy).

d. Plaintiff's claims are barred, in whole or in part, to the extent the physical loss or damage claimed by Plaintiff was not caused by (or did not result from) a covered cause of loss (as required by the Policy).

e. Plaintiff's claims are barred, in whole or in part, to the extent the Plaintiff seeks coverage under the Policy for physical loss or damage to property other than "Covered Property" as defined in the Policy.

f. Plaintiff's claims are barred, in whole or in part, by the Policy's exclusion for "cosmetic loss or damage" as defined in the Policy.

g. Plaintiff's claims are barred, in whole or in part, by Plaintiff's neglect to use all reasonable means to save and preserve the property from further damage at and after the time of loss.

h. Plaintiff's claims are barred, in whole or in part, by the Policy's exclusion(s) for wear and tear or depletion.

i. Plaintiff's claims are barred, in whole or in part, by the Policy's exclusion(s) for rust, corrosion, decay, deterioration, hidden or latent defect, and/or any quality in the property that causes it to damage or destroy itself.

j. Plaintiff's claims are barred in whole or in part by the Policy's exclusion for faulty, inadequate or defective: design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction; materials used in repair, construction, renovation or remodeling; or maintenance.

k. Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff failed to take all reasonable steps to mitigate, minimize, or avoid the damages allegedly

sustained and/or to protect the property from further damage. Plaintiff's recovery under the Policy and Texas law, if any, must be offset and reduced accordingly.

1. Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged damages were caused, in whole or in part, by the negligent acts and/or omissions of Plaintiff.

m. Plaintiff's claims are barred, in whole or in part, because Plaintiff's alleged damages were caused, in whole or in part, by the negligent acts and/or omissions of third parties over whom Peleus has and/or had no control.

n. A bona fide controversy exists concerning the extent of Plaintiff's entitlement to benefits under the Policy. Peleus and/or its employees, agents, representatives, and adjusters are entitled to value claims differently from Plaintiff without facing extra-contractual liability. Peleus would show that a bona fide controversy exists regarding: (a) the existence and/or scope of any covered loss or damage; (b) whether and to what extent any asserted loss or damage was the result of a covered occurrence or occurrences; (c) the reasonable and necessary measures to repair any covered loss or damage; and (d) the reasonable and necessary measures to repair any covered loss or damage.

o. Plaintiff's claim for exemplary damages is unconstitutional and violates the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and of Article 1, Section 19 of the Texas Constitution for the following reasons: (a) the standards under which such claims are submitted are so vague as to be effectively meaningless and threaten a deprivation of property for the benefit of society without the protection of fundamentally fair procedures; (b) the highly penal nature of

exemplary damages threatens the possibility of excessive punishment and almost limitless liability without the benefit of fundamentally fair procedures or any statutory limitations; (c) the introduction of evidence of Peleus's financial worth is so prejudicial as to impose liability and punishment in a manner bearing no relation to the extent of any injury allegedly inflicted or to any benefit from any alleged wrongdoing and, therefore, any verdict would be the result of bias and prejudice in a fundamentally unfair manner.

p. Plaintiff's claim for exemplary damages constitutes an unconstitutional excessive fine under Article 1, Section 13 of the Texas Constitution because such highly penal sanctions may be imposed for the benefit of society under standards so vague and effectively meaningless as to threaten unlimited punishment bearing no relation to the extent of any injury allegedly inflicted at the unbridled discretion of the jury.

q. To the extent Plaintiff has asserted claims against Peleus under Texas Insurance Code Chapter 541, those claims are barred by Section 541.153, and this Court should award Peleus court costs and reasonable and necessary attorneys' fees because any such claims under the Texas Insurance Code are groundless and brought in bad faith or for the purpose of harassment.

7. Peleus further reserves the right to assert additional affirmative defenses as this litigation proceeds.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendant Peleus Insurance Company prays that upon final judgment all relief requested by Plaintiff be denied, that all costs be taxed against Plaintiff, and for such other and further relief to which it may be justly entitled, whether at law or in equity.

Respectfully submitted,

**ZELLE LLP**

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**ATTORNEYS FOR DEFENDANT  
PELEUS INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

On December 28, 2016, I served a true and correct copy of Defendant Peleus Insurance Company's Answer to Plaintiff's First Amended Petition upon all known counsel of record pursuant to the Texas Rules of Civil Procedure addressed as follows:

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